

UT 96-2

Tax Type: USE TAX

Issue: Use Tax On Aircraft Purchase

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

TAXPAYER

Taxpayer

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Docket #

IBT #

Karl W. Betz
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES

ATTORNEY, SPRINGFIELD, FOR TAXPAYER.

SYNOPSIS

THIS CAUSE CAME ON TO BE HEARD FOLLOWING A LIMITED SCOPE USE TAX AUDIT PERFORMED BY THE ILLINOIS DEPARTMENT OF REVENUE (HEREINAFTER THE "DEPARTMENT") UPON TAXPAYER (HEREINAFTER THE "TAXPAYER").

WHILE REVIEWING FEDERAL AVIATION ADMINISTRATION SALES LISTINGS, THE DEPARTMENT DISCOVERED THAT TAXPAYER HAD MADE A PURCHASE OF AN AIRPLANE AND REGISTERED IT TO AN ILLINOIS ADDRESS. THE DEPARTMENT THEN ASSIGNED THIS MATTER FOR AUDIT AND MADE INQUIRIES WITH THE FEDERAL AVIATION ADMINISTRATION AND THE TAXPAYER. THE AUDIT RESULTED IN THE DEPARTMENT ASSESSING USE TAX UPON THE AIRPLANE IN NOTICE OF TAX LIABILITY NO. XXXXX.

WITNESS, PRESIDENT OF TAXPAYER, TESTIFIED AT THE HEARING REGARDING THE PURCHASE OF THE AIRPLANE.

THE ISSUE IN THIS CASE IS WHETHER TAXPAYER'S PURCHASE OF THE AIRPLANE QUALIFIES FOR THE OCCASIONAL SALE EXEMPTION SET OUT IN STATUTORY AND REGULATORY PROVISIONS.

AFTER CONSIDERING THIS MATTER, I RECOMMEND THE ISSUE BE RESOLVED IN FAVOR OF THE DEPARTMENT.

FINDINGS OF FACT:

1. PURSUANT TO STATUTORY AUTHORITY, THE AUDITOR DID CAUSE TO BE ISSUED AN AUDIT CORRECTION AND/OR DETERMINATION OF TAX DUE (DEPT. EX. NO. 1)

2. THE INTRODUCTION OF THE NOTICE OF TAX LIABILITY (DEPT. EX. NO. 3) AND THE CORRECTED RETURN (DEPT. EX. NO. 1) INTO EVIDENCE ESTABLISHED THE DEPARTMENT'S PRIMA FACIE CASE IN THIS MATTER. (TR. PP. 4, 10)

3. THE 1979 CESSNA T210N AIRPLANE ASSESSED HEREIN WAS PURCHASED BY TAXPAYER ON DECEMBER 1, 1992, FROM OWNER. (DEPT. EX. NO. 2, PP. 24 - 25)

4. OWNER, DOING BUSINESS AS COMPANY, IS A RETAILER OF AIRPLANES. (DEPT. EX. NO. 2, PP. 39 - 42)

5. AFTER SIXTEEN MONTHS OF OWNERSHIP, THE TAXPAYER EXECUTED AN AIRCRAFT BILL OF SALE AND SOLD THE CESSNA ON MARCH 31, 1994, BACK TO OWNER D/B/A COMPANY. (DEPT. EX. NO. 2, PP. 25 - 26)

6. TAXPAYER DID NOT SUBMIT ANY DOCUMENTARY EVIDENCE AT HEARING TO REBUT THE PRIMA FACIE CASE OF THE DEPARTMENT. (TR. P. 3)

CONCLUSIONS OF LAW

A TAX IS IMPOSED UPON THE PRIVILEGE OF USING TANGIBLE PERSONAL PROPERTY IN ILLINOIS. (35 ILCS 105/3) THE WORD "USE" IS DEFINED IN THE USE TAX ACT AS THE EXERCISE OF OWNERSHIP POWER OVER TANGIBLE PERSONAL PROPERTY

SUCH AS THE AIRPLANE TAXPAYER PURCHASED HEREIN. (35 ILCS 105/2 & 3) HOWEVER, THE USE TAX WOULD NOT APPLY IF THE ACQUISITION WAS NOT IN A RETAIL SALE BUT INSTEAD A PURCHASE FROM A NON-RETAILER. (86 ADMIN. CODE, CH. I, SEC. 130.110)

THE THRUST OF TAXPAYER'S TESTIMONY IS THAT BECAUSE HE PURCHASED THE AIRPLANE FROM A PRIVATE INDIVIDUAL, IT SHOULD QUALIFY FOR THE OCCASIONAL SALE EXEMPTION.

I DO NOT FIND THIS ARGUMENT TO BE PERSUASIVE BECAUSE THE RECORD CONTAINS DOCUMENTARY EVIDENCE IN THE FORM OF AIRCRAFT PURCHASE AGREEMENTS (DEPT. EX. NO. 2, PP. 39 - 42) THAT SHOW THAT OWNER, D/B/A COMPANY, BOTH BOUGHT AND SOLD AIRPLANES WITH ILLINOIS RESIDENTS PRIOR TO THE TRANSACTION AT ISSUE HEREIN. ALSO, THE RECORD CONTAINS A PHOTOCOPY OF A SHEET FROM THE BLOOMINGTON, ILLINOIS, TELEPHONE BOOK YELLOW PAGES SHOWING COMPANY LISTED AS AN AIRCRAFT DEALER. (DEPT. EX. NO. 2, P. 40)

THE TAXPAYER INTRODUCED NO DOCUMENTARY EVIDENCE IN THIS CASE. ILLINOIS COURTS HAVE SAID THAT ORAL TESTIMONY IS NOT SUFFICIENT TO OVERCOME THE DEPARTMENT'S PRIMA FACIE CASE WHEN NOT TIED TO DOCUMENTARY EVIDENCE IN THE FORM OF BOOKS AND RECORDS. COPILEVITZ V. DEPARTMENT OF REVENUE, 41 ILL.2D 154, (1968); FILlichio V. DEPARTMENT OF REVENUE, 15 ILL.2D 327, (1959).

TAXPAYER IN HIS TESTIMONY REFERRED TO A LETTER FROM OWNER STATING THAT HE WAS NOT AN AIRCRAFT DEALER. THIS LETTER WAS SUBMITTED BY TAXPAYER WHEN HE PROTESTED THE ASSESSMENT. (DEPT. EX. NO. 3) I ATTACH NO WEIGHT TO THIS LETTER AS IT STATES A LEGAL CONCLUSION WITHOUT DOCUMENTARY SUPPORT.

IN SUMMARY, I FIND THE TAXPAYER HAS NOT OVERCOME THE PRIMA FACIE CASE OF THE DEPARTMENT.

RECOMMENDATION

BASED UPON MY FINDINGS AND CONCLUSIONS AS STATED ABOVE, I RECOMMEND
THE DEPARTMENT FINALIZE THE NOTICE OF TAX LIABILITY AND ISSUE A FINAL
ASSESSMENT.

KARL W. BETZ
ADMINISTRATIVE LAW JUDGE